

## REMARKS

### I. Status of the Claims

Claims 1-17 were previously cancelled.

Without prejudice or disclaimer, claims 44-47 have been cancelled, and claim 18 has been amended. Claims 48-54 have been withdrawn as allegedly being drawn to non-elected inventions. Support for those amendments can be found either in the specification or in the claims as originally filed. Accordingly, there is no new matter.

Claims 18-43, and 48-54 are pending with entry of this amendment.

### II. Election/Restrictions

The Office made the Restriction Requirement to Group I, claims 18-47, final. See Office Action at 2. The Office withdrew claims 48-54 from further consideration pursuant to 37 CFR 1.142(b) as allegedly being drawn to a non-elected invention. Applicant does not necessarily agree with the finality of the restriction Requirement, and continue to reserve the right to present the subject matter disclosed by all non-elected group in this or a later-filed divisional application.

### III. Priority

In accordance with the Office's request for a certified English language translation of U.S. Provisional No. 60/443,556 to perfect the priority claim, *see* Office Action at 2-3, Applicant hereby confirms that both an English translation of the provisional application and a statement that the translation is accurate have been concurrently filed in U.S. Provisional No. 60/443,556. A copy of the cover sheet of "Submission of Certified English Language of Provisional Application" under 37 C.F.R. 1.52(d)(2) is provided to the Office with the present filing.

**IV. Claim Rejections under 35 U.S.C. § 102**

Claims 18-19, 21-25, 27, 34-36, 44-45, and 47 are rejected under 35 U.S.C. § 102 (b) as allegedly "being anticipated" by Clay (U.S. Patent No. 5,775,344) for reasons as set forth at page 3 of the Office Action.

Claims 18-23, 25-26, 29-30, and 44-46 are also under 35 U.S.C. § 102 (b) as allegedly "being anticipated" by Strack et al. (U.S. Patent No. 4,913,957) for reasons as set forth at page 4 of the Office Action.

Claims 18-19, 24, and 37-43 are further rejected under 35 U.S.C. § 102 (b) as allegedly "being anticipated" by JP 05-077038-U ('038 reference) for reasons as set forth at pages 4-5 of the Office Action.

Applicant respectfully disagrees and traverses those rejections for the following reasons.

Clay describes the use of an applicator rod and brush assembly with a heating strip and a battery inside the rod to keep a heatable cosmetic substance fluid and pliable. See Abstract and col. 3, lines 55-60. As such, Clay teaches a carrier, e.g., the applicator, which does **not** have two opposite non-occlusive application surfaces as recited in current claim 18, as amended. Furthermore, clay has an **interior** energy source, e.g., the battery, which clearly differs from the limitation "an energy source external to the carrier" as currently recited in claim 18. Accordingly, Clay does not anticipate the present claims as amended and the anticipation rejection over Clay should be withdrawn.

Strack et al. teaches the use of a laminate to impart treatment liquids/lotions to the skin. See Abstract. That laminate comprises a skin contact

layer 12 which is impregnated with the treatment lotion, a first nonporous or low porous barrier layer 14, a reservoir layer 16 which is impregnated with a heat retention liquid, and a second nonporous barrier layer 18. The reservoir layer 16 is sandwiched by barrier layers 14 and 18. *See* Figs 1 and 2, and col. 3, lines 36-42. It is clear that the laminate has at most one application surface, e.g., the skin contact layer, and clearly does not have **two** opposite non-occlusive surfaces, which can be impregnated with a cosmetic product, as currently recited in claim 18, as amended. Strack thus does not anticipate the present claims as amended and this anticipation rejection over Strack should be withdrawn.

The '038 reference describes the use of a plastic container (tube) comprising a waxing compound. However, that container has only one end open, and thus clearly is not a carrier comprising two opposite non-occlusive application surfaces as recited in claim 18, as amended. *See* Abstract. As such, the '038 reference does not anticipate the present claims as amended and the anticipation rejection over the '038 should be withdrawn.

**V. Claim Rejections under 35 U.S.C. §103(a)**

Claim 28 is rejected under 35 U.S.C. § 103 (a) as allegedly "being unpatentable" over Clay in view of Poucher's ("Poucher's Perfumes, Cosmetics, and Soaps", 10<sup>th</sup> Edition, 2000, pages 199-202) for reasons as set forth at page 5 of the Office Action. Applicant respectfully disagrees and traverses the rejection for the following reasons.

As discussed above, Clay does not teach or suggest a carrier comprising two opposite non-occlusive application surfaces as currently recited in claim 18, as

amended. Clay further differs from the presently claimed inventions by having an interior energy source. The Examiner relies on Poucher's for the teaching that mascaras can comprise water. As such, Poucher's does not rectify Clay's deficiency. Those two references, alone or in combination, do not render current claims obvious. This rejection thus should be withdrawn.

Claims 31-33 are rejected under 35 U.S.C. § 103 (a) as allegedly "being unpatentable" over Strack et al. for reasons as set forth at pages 5-6 of the Office Action. Applicant respectfully disagrees and traverses the rejection for the following reasons.

As discussed above, Strack does not teach a carrier comprising two opposite non-occlusive application surfaces as currently claimed, as amended. Neither does Strack suggest or motivate a skilled artisan to make such a carrier. Strack teaches away from modifying the barrier layer 18 into a non-occlusive layer. Strack teaches that the barrier layer 18 inhibits the escape of vapor so that the laminate retains heat better. See col.3, lines 22-25. As such, a skilled artisan would not modify the barrier layer 18 into a non-occlusive layer because doing so would diminish the heat storage ability of the laminate, thereby being contrary to the goal of Strack's teaching. Strack therefore does not render the present claims, as amended, obvious, and this rejection should be withdrawn.

### **CONCLUSIONS**

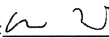
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: August 12, 2009

By: 

Wen Li

Reg. No. 62,185

Tel: (650) 849-6649